

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

LESLIE LORD

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**C.A. No. T19-0022
19304500351**

DECISION

PER CURIAM: Before this Panel on February 12, 2020—Magistrate Goulart (Chair), Administrative Magistrate Abbate, and Magistrate Noonan, sitting—is Leslie Lord’s (Appellant) appeal from a decision of Magistrate Erika Kruse Weller (Trial Magistrate) of the Rhode Island Traffic Tribunal, denying Appellant’s motion to reduce sentence for a sustained violation of G.L. 1956 § 31-27-2.1, “Refusal to submit to chemical test.” Appellant appeared before this Panel represented by counsel. For the reasons set forth in this opinion, the appeal is denied.

I

Facts and Travel

On March 13, 2019, Officer James Thulier of the Portsmouth Police Department issued Appellant a citation for the above-referenced violation. *See* Summons No. 19304500351. On May 8, 2019 Appellant entered a plea of guilty at a pre-trial conference. The Trial Magistrate thereafter imposed a sentence which included the loss of defendant’s license for forty-five days retroactive to March 22, 2019 and the imposition of an Ignition Interlock System (interlock system or interlock) for a period of eight months.

On October 24, 2019, Appellant filed a motion to reduce sentence, seeking to remove the interlock system in her vehicle, or in the alternative, a motion to vacate her guilty plea. On

October 31, 2019, the Trial Magistrate heard Appellant's argument in the matter. Tr. at 2, Oct. 31, 2019. Appellant argued that she broke her wrist after the forty-five day loss of license concluded, making it difficult or nearly impossible for her to drive because she could not properly operate the interlock system as required by the Trial Magistrate's sentence. *Id.* However, in response to the Trial Magistrate's inquiry regarding how Appellant had been able to continue traveling to and from work, Appellant acknowledged that she sometimes "just drive[s] and put[s] the thing on my lap, but it's very difficult." *Id.* at 3. Nevertheless, Appellant requested that the Trial Magistrate amend the sentence and have the interlock removed. *Id.* at 2. Appellant further requested that she be sentenced to a seven month loss of license per the State's initial recommendation, which, if applied retroactively, would entitle her to be immediately reinstated. *Id.* at 6.

After hearing arguments and the Appellant's unsworn testimony, the Trial Magistrate declined to amend Appellant's sentence. *Id.* at 8. The Trial Magistrate noted that Appellant did not produce any medical documentation indicating her inability to drive. *Id.* at 8. The Trial Magistrate also noted that Appellant had been driving and was able to operate the interlock in her vehicle, albeit awkwardly. *Id.* at 8. Additionally, the Trial Magistrate discussed that the underlying motor vehicle incident which gave rise to Appellant's sentence involved a serious accident and exceedingly high preliminary breath test (PBT) reading. *Id.* at 8. Accordingly, the Trial Magistrate denied Appellant's motion to reduce sentence. *Id.* at 9.

Appellant subsequently filed a motion to reconsider or, in the alternative, a motion to vacate plea, with the Trial Magistrate hearing argument in the matter on November 7, 2019. Tr. Nov. 7, 2019 at 2. Appellant reiterated the same arguments made on October 31, 2019 and this time provided the Trial Magistrate with supporting medical documentation. *Id.* at 2. Appellant

again requested that the interlock be removed. *Id.* at 4.

After hearing argument, the Trial Magistrate again denied the motion to amend the sentence and further denied the request to vacate Appellant's plea. *Id.* at 10. Appellant subsequently filed this timely appeal of the Trial Magistrate's decision. *See* Appellant's Notice of Appeal at 1-2. Forthwith is the Panel's decision.

II

Standard of Review

Pursuant to § 31-41.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides, in relevant part:

"The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudiced because the judge's findings, inferences, conclusions or decisions are:

- "(1) In violation of constitutional or statutory provisions;
- "(2) In excess of the statutory authority of the judge or magistrate;
- "(3) Made upon unlawful procedure;
- "(4) Affected by other error of law;
- "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

In reviewing a hearing judge or magistrate's decision pursuant to § 31-41.1-8, this Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact." *Link v. State*, 633 A.2d 1345, 1348 (R.I. 1993) (citing *Liberty Mutual Insurance Company v. Janes*, 586 A.2d

536, 537 (R.I. 1991)). “The review of the Appeals Panel is confined to a reading of the record to determine whether the judge’s [or magistrate’s] decision is supported by legally competent evidence or is affected by an error of law.” *Id.* (citing *Environmental Science Corporation v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)). “In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision.” *Id.* Otherwise, it must affirm the hearing judge’s (or magistrate’s) conclusions on appeal. *See Janes*, 586 A.2d at 537.

III

Analysis

On appeal, Appellant argues that the Trial Magistrate’s decision to deny Appellant’s motion to amend the sentence, motion to vacate the plea¹ and denial of Appellant’s motion to reconsider was “[a]rbitrary or capricious or characterized by abused of discretion or clearly unwarranted exercise of discretion.” Sec. 31-41.1-8(f)(6). Appellant also sets forth a constitutional argument. Each argument will be discussed in turn.

A

Abuse of Discretion

Although not fully formulated on appeal, Appellant argues that the Trial Magistrate’s decision, which effectively required the interlock to remain in place after Appellant argued the interlock created difficulty in operating the vehicle, constituted an abuse of discretion. In the instant matter however, it is clear that both the Trial Magistrate’s decision to decline to amend and the denial of the motion to reconsider were supported by legally competent evidence. The

¹ While Appellant styled the motion in the alternative, the Appellant failed to raise any legal argument supporting her motion to vacate the plea. Accordingly, the motion to vacate the plea is deemed waived.

Trial Magistrate reiterated several times that she based Appellant’ original sentence on the facts of the incident, such as the nature of the motor vehicle accident and the high PBT reading. *See* Tr. at 6:10-18, Nov. 7, 2019. Additionally, the Trial Magistrate noted that it was not impossible, just more difficult, for Appellant to operate her vehicle with the interlock. Appellant also admitted to operating the vehicle, which the Trial Magistrate considered in reaching her decision. Tr. 8:4-5, Oct. 31, 2019. For these reasons, the Trial Magistrate’s denial of Appellant’s motion to amend Appellant’s sentence, as well as the denial of the motion to reconsider, was based on sufficient evidence and did not constitute an abuse of discretion.

B

Constitutional Argument

In response to the Panel’s inquiry as to why Appellant’s case is not moot, Appellant argues that despite the fact that she has completed her sentence, her case could constitute an exception to the mootness doctrine for wrongs capable of repetition that evade review. This Panel disagrees. The court generally has declined to address cases that are moot because “without the presence of a justiciable case or controversy, judicial power is at its weakest ebb.” *Robar v. Robar*, 154 A.3d 947, 948 (R.I. 2017) (quoting *Hallsmith-Sysco Food Services, LLC v. Marques*, 970 A.2d 1211, 1213 (R.I. 2009)). However, a court may exercise its discretion in cases which are moot if the case is of extreme public importance, which are capable of repetition, but which evade review. *Boyer v. Bedrosian*, 57 A.3d 259, 281 (R.I. 2012). Issues of extreme public importance usually implicate important constitutional rights, matters concerning a person’s livelihood, or matters concerning citizen voting rights. *Id.* A case is capable of repetition yet evading review when there is a reasonable expectation that the same complaining party would be subjected to the same action again. *Id.* It is clear that the Appellant is unable to

satisfy any of the hurdles of the mootness bar. Accordingly, this Panel determines that further review is barred by the doctrine of mootness.

After thoroughly reviewing the record, this Panel finds that there was sufficient evidence offered at trial to support the Trial Magistrate's decision. *See Link*, 633 A.2d at 1348 (citing *Env'tl. Sci. Corp.*, 621 A.2d at 208). Accordingly, this Panel finds the Trial Magistrate's decision was not "[a]rbitrary or capricious or characterized by abused of discretion or clearly unwarranted exercise of discretion." Sec. 31-41.1-8(f)(6).

IV

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the Trial Magistrate's decision was not arbitrary or capricious, nor did the Trial Magistrate abuse her discretion. *See* § 31-41.1-8(f)(6). The substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, the charged violation is sustained.

ENTERED:

Magistrate Alan R. Goulart (Chair)

Administrative Magistrate Joseph A. Abbate

Magistrate William T. Noonan

DATE: _____